

### III. REMARKS/ARGUMENTS

#### *A. Generally*

The Examiner has indicated that claims 1 - 5 are pending in the application; that claim 1 is rejected under 35 U.S.C. 102(b) as anticipated by the patent to Corsentino (US 4,209,068); that claims 1 - 2 are rejected under 35 U.S.C. 102(e) as anticipated by the patent to Buhler (US 6,427,781); that claims 1, 4, and 5 are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Parish (US 4,262,752; and that claim 3 is rejected under 35 U.S.C. 103(a) as unpatentable over Corsentino or, alternatively, Buhler et al in view of the patent to Finneybrook (US 3,357,499).

#### *B. Response to Rejections Based on 35 U.S.C. §§ 102(b) and 102(e)*

Section 102(b) provides that “a person shall be entitled to a patent unless the invention was patented or described in a printed publication ... more than one year prior to the date of the application.” 35 U.S.C. §102(b) (2000). Accordingly, a rejection based on anticipation requires that the “four corners” of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See *Atlas Powder Co. v. Ireco, Inc.*, 190 F3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

In the instant case, original Claim 1 has been amended to recite that the semi-flexible blade of the blade assembly includes a lower edge and an upper edge, a front side and a rear side, a vertical axis and a horizontal axis... Additionally, the claim has been amended to recite that the upper edge of the semi-flexible blade is attached to the blade frame so as to generally conform to said bend in said blade frame such that said front side of said semi-flexible blade is generally concave about said vertical axis. Further, the claim has been amended to recite that the

height adjustment means permits vertical movement of the blade assembly during use. And, finally, the claim has been amended to indicate that when employed in a road paving operation, said semi-flexible blade, height adjustment means, and pressure adjustment means cooperate to press said semi-flexible blades into soft and movable paving material, thereby collecting and channeling loose road paving material toward said vertical axis of said semi-flexible blade, and smoothing the road surface as said semi-flexible blade passes over it.

This amendment distinguishes the present invention from all of the references cited in the office action. No new matter is added as all of the structural and functional aspects included in the amended claim may be found at page 10, line 5, through page 11, line 8.

Corsentino shows a track closing attachment for a mobile irrigation tower. The device includes a pair of earth closing disks 31 and 33 rotatably mounted on a respective pair of outwardly angled shanks 35 and 37, which are rigidly attached to square sleeves 27 and 29, which are, in turn, rigidly secured on legs 23 to prevent and sliding (side-to-side) movement. Corsentino teaches discs; it does not show a tire track remover having a blade frame with a bend to which a semi-flexible blade having a vertical and horizontal axis is attached. The discs in Corsentino are rigid and are rigidly attached to their support to be angled so as to gouge the earth and force dirt into the tire track area are rigid and round. Additionally, Corsentino does teach dynamic height adjustment means for the earth moving discs. Accordingly Corsentino does not anticipate the invention of claim 1 as amended.

Likewise, Parish does not anticipate claim 1 as amended. Parish discloses a plowing implement comprising a pair of scalloped disks 14 which draw soil upwardly and inwardly to fill a rut or trench formed by wheel. It does not show the bent blade frame or the semi-flexible blade of the present invention. Further, it does not show pressure adjustment means to adjust the downward pressure exerted by the blades. While it includes height adjustment means that permit up and down travel during use, it would not make any sense to include pressure adjustment

means as the discs are rigid, and simply setting the height of the blades regulates the degree to which they gouge into the earth.

Buhler et al do not teach a semi-flexible blade having a concave front side and a vertical axis which channels road material toward the vertical axis during use. Instead, Buhler et al teach a wheel track scraper having pair of spaced-apart and opposing V-shaped scraper blades attached at to a support tower configured to push field dirt displaced by wheel rotation into the track where the wheel has traveled. The scraper blades do not push dirt into the middle of a scraper blade itself, however, as is the case in the present invention. The advantage of the present invention, and what makes it uniquely fitted for use in road paving, especially asphalt road paving, is that the semi-flexible scraper blade first pushes paving material into the track area, then it smooths over the material, making it fit for immediate finishing with a roller, and obviating the need for raking. The device of Buhler et al would not create the smooth and even material surface, as it does not smooth over the material after it has pushed it into the track area. Accordingly, it is respectfully submitted that Buhler et al does not anticipate the invention of claim 1, as amended.

***C. Response to Rejections Based on 35 U.S.C. § 103(a)***


Because claim 1 has been substantially amended in order to overcome the rejections based on Section 102(b) and 102(e), it is respectfully submitted that none of the references, either alone or in combination, show all of the elements of the invention as claimed in amended independent claim 1. Accordingly, the rejection of claim 3 under Section 103(a) is now moot.

#### IV. CONCLUSION

In view of these amendments and comments it is believed that each of the presently pending claims in this application is in condition for immediate allowance, and such allowance is therefore respectfully requested. The Examiner is invited to call Applicant's undersigned attorney if, in the opinion of the Examiner, a telephone conference will in any way expedite prosecution of this application.

Respectfully Submitted,

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